

**REMARKS**

Reconsideration of this application as amended is respectfully requested. Claims 20 and 22 have been cancelled, and claims 18, 19 and 21 were previously cancelled. Therefore, claims 1-17 remain in this application and are again presented for the Examiner's consideration in view of the comments which follow.

In the Official Action, claims 1-4, 6 and 13-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,976,607 to Higgins et al. ("*Higgins I*") in view of U.S. Patent No. 5,858,431 to Wiedersatz ("*Wiedersatz*"). Applicants respectfully traverse this rejection in view of the comments which follow.

Applicants initially note the requirement in claim 1 for:

"introducing the coated particles into a hot air environment." (emphasis added)

Applicants submit that neither *Higgins I* nor *Wiedersatz*, either alone or in combination, teaches or suggests this limitation.

As applicants have noted in previous correspondence, *Higgins I* is directed to a water-dispersible coating for use in preparing fried foods. (*Higgins I*, title and abstract.) The reference teaches a method in which potatoes are processed into potato articles having a desired size and shape, blanched, dried, dipped in a solution containing sodium acid pyrophosphate, oven dried, coated with an emulsion containing starch, oil, salt and coloring, and fried in oil. (*Higgins I*, col. 7, lns. 37-51.) As acknowledged by the Examiner, *Higgins I* does not teach the step of introducing the coated potato articles into a hot air environment.

In order to overcome the shortcomings of *Higgins I*, the Examiner has attempted to combine this reference with *Wiedersatz*. Applicants submit that this combination of references is improper, and even if the references could somehow be combined, they still would not teach the subject matter of the present invention.

*Wiedersatz* is directed to processes for manufacturing potato chips without the use of an oil frying step. (*Wiedersatz*, col. 2, lns. 10-13.) According to the process of *Wiedersatz*, potatoes are sliced, washed, oven dried, coated with oil and seasoning, and then passed through a combination microwave-hot air dryer for further drying. (*Wiedersatz*, col. 2, lns. 13-48 and Fig. 1.) Once the potato chips leave the microwave/oven, they are a finished product ready for packaging. (*Wiedersatz*, col. 4, lns. 45-49.)

It is clear from the foregoing that the process of *Wiedersatz* does not coat the potato chips with an emulsion including starch. Furthermore, nowhere in the process of *Wiedersatz* are the potatoes fried in oil. Hence, the process of *Wiedersatz* is completely different from that of *Higgins I*. Because these processes are so different from one another, applicants submit that one of ordinary skill in the art would lack the motivation to combine the hot air drying of *Wiedersatz* with the other processing steps of *Higgins I*.

Moreover, while the present application refers to the production of "chips or fries," applicants note that the application originated in the United Kingdom, where the term "chips" refers to what is generally known in the United States as french fries. Products that are generally known as "potato chips" in the United States are referred to as "crisps" in the United Kingdom. That the present application refers to french fries and not to potato chips is clear from page 1, lines 29-31 which states "the potatoes are cut into elongate sticks known

variously as chips or fries. Chips typically have a substantially square cross-section of between 8mm to 15 mm." As french fries have an entirely different texture (firm, moist) than potato chips (crisp, dry), applicants submit that one skilled in the art attempting to improve upon the process of *Higgins I* for preparing french fries would not turn to *Wiedersatz*.

Rather than finding the motivation to combine the references in the prior art, the Examiner's rejection is a classic example of hindsight reconstruction in which the Examiner has selected teachings from multiple prior art references to create the subject matter claimed by applicants using the applicants' specification as a "template." *Texas Instruments, Inc. v. US Int'l. Trade Comm'n.*, 988 F.2d, 1165, 26 USPQ 2d 1018 (Fed. Cir. 1993). The impropriety of such hindsight reconstruction is well settled. *Interconnect Planning Corp. v. Feil*, 744 F.2d, 1132, 227 USPQ 523 (Fed. Cir. 1985); *In re Fine*, 837 F.2d, 1071, 15 USPQ 2d 1596 (Fed. Cir. 1998). Although the recent Supreme Court decision in *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007), rejected a "rigid application" of the "teaching, suggestion or motivation" test for combining reference teachings, the decision reaffirms the principle that there still must be an apparent reason to combine elements taught by plural references. No such reason is apparent here.

Simply a brief review of the titles of *Higgins I* and *Wiedersatz* would suggest a lack of motivation to combine these references. The title of *Higgins I* is "Water Dispersible Coating Composition for Fat-Fried Foods." It is therefore readily apparent from this title that there is no intention that the disclosed process produce a food product that is low in fat content. On the other hand, the title of *Wiedersatz* is "Method and Apparatus for Preparing Fat Free Snack Chips Using Hot Air

Impingement, Microwaving, and Hot Air Drying." This title makes it clear that the described process is intended to produce a product that is fat free by avoiding frying the products in oil. In view of the totally different goals of the two processes, applicants submit that one of ordinary skill in the art would not look to *Wiedersatz* in order to improve upon the process of *Higgins I*.

Beyond the titles of the two references, *Higgins I* is specifically directed to prolonging the serving time of deep fat fried foods, and in particular, fried potatoes. (*Higgins I*, col. 3, lns. 33-43.) That is, the potatoes made by the process of *Higgins I* are intended to be fried in oil by the end user in order to finish the cooking process and heat the product for eating. According to *Higgins I*, the loss of taste and texture of fried foods is due to both oil infusion and loss of moisture from the frying step. (*Higgins I*, col. 1, lns. 55-60.) The starch-containing emulsion coatings applied to the potatoes are intended to act as a barrier to oil absorption and moisture loss. (*Higgins I*, col. 1, lns. 61-65.) Thus, the intended purpose of the coatings is to keep moisture in the potato while keeping oil out.

*Wiedersatz*, on the other hand, deliberately desires to remove moisture content from the potatoes during processing, and specifically uses hot air ovens for this purpose. The first oven removes 50-60% of the moisture in the potato, and the second oven removes 20-30% of the remaining moisture. (*Wiedersatz*, col. 6, lns. 37-43.) Even after this processing, the moisture content of the potato may still be too high, leaving the chips in an "unfinished state." (*Wiedersatz*, col. 6, lns. 44-49.) Following application of a light oil coating and seasoning, the chips are subjected to a combination microwave-hot air drying step to further dry the chips. (*Wiedersatz*, col. 6, lns. 66-67.) This final drying step

reduces the moisture content in the potato to a final content of 2-4%. (*Wiedersatz*, col. 7, lns. 30-32.) Thus, it is quite clear that the hot air drying steps of *Wiedersatz* are intended to remove as much moisture as possible from the potato, which is in direct contradiction to the purpose of the emulsion coating of *Higgins I*. Plainly, the skilled artisan desiring to improve upon the process of *Higgins I*, which has as one of its objects maintaining the moisture content of the potatoes, would have no reason whatsoever to turn to *Wiedersatz*. Rather, such artisans would avoid the post-coating hot air heating step of *Wiedersatz* since that would have the manifestly undesirable effect of removing moisture from the potatoes.

Moreover, even if the teachings of *Higgins I* could somehow be combined with those of *Wiedersatz*, applicants submit that such combination would still not teach the subject matter of the present invention. More particularly, applicants note that the present invention is specifically directed to the provision of french-fried potatoes having an acceptable taste and mouth feel, but having a lower fat content than conventional french-fried potatoes which are cooked in oil. (p. 1, lns 6-14.) The invention achieves this result by avoiding the deep frying of potatoes in oil. Simply adding a hot air heating step to the process of *Higgins I* would not eliminate the need to deep-fat fry the potatoes prior to serving. Thus, the combination of *Higgins I* with *Wiedersatz* teaches away from the methods of the present invention which avoid frying in oil so as to produce low fat potato articles. In view of the foregoing, applicants submit that claims 1-4, 6 and 13-15 all patentably distinguish over the combination of *Higgins I* and *Wiedersatz* such as to warrant their immediate allowance, which action is respectfully requested.

Claims 5, 7-12, 16 and 17 have been rejected under 35 U.S.C. § 103(a) as being obvious over the combination of

*Higgins I* and *Wiedersatz*, in further combination with U.S. Patent No. 5,279,840 to Baisier et al. ("*Baisier*") (claim 5); U.S. Patent No. 6,132,785 to Collinge et al. ("*Collinge*") (claims 7, 12, 16 and 17); U.S. Patent No. 5,139,800 to Anderson et al. ("*Anderson*") (claims 8 and 9); U.S. Patent No. 5,753,286 to Higgins et al. ("*Higgins II*") (claim 10); and *Higgins II* and *Anderson* (claim 11).

Applicants initially reiterate the contentions set forth above with regard to the clear deficiencies of both *Higgins I* and *Wiedersatz*, and in particular, in their attempted combination. None of the secondary references cited by the Examiner overcomes these deficiencies. Accordingly, applicants submit that claims 5, 7-12, 16 and 17 patentably distinguish over *Higgins I* in view of *Wiedersatz* and further in view of each one of these secondary references such as to warrant their immediate allowance. In view of the foregoing, withdrawal of these rejections is respectfully requested.

Claim 20 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Higgins I* in view of *Anderson*. Applicants note that claim 20 has been cancelled, rendering this rejection moot.

Claim 22 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Higgins I* in view of *Higgins II*, and further in view of *Anderson*. Applicants note that claim 22 has been cancelled, rendering this rejection moot.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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